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ABSTRACT

Based on visits to unionized campuses, this study determined how some imaginative higher education administrators and faculty representatives resolve disputes under a collective bargaining contract. The focus of the study was on the informal working relationships that helped to resolve conflict either within or outside the contractual procedures. Although grievance procedures were studied and discussed, they were considered to provide only the framework within which the parties attempted to resolve their differences. Differences between a procedural grievance (charging that the administration failed to adhere to contractual procedures) and a substantive grievance (charging the administration with making an unjustifiable decision) were also an important aspect of the study. In eight of the nine institutions studied, both management and labor representatives were interviewed and were allowed to pursue a wide variety of topics to determine the unique relationships existing at each institution. Topics included: representation on grievance committees; procedures; fair resolution; secretive vs. open processes; faculty and administrative reactions; union-faculty senate relationship; political considerations; institutional communication; multicampus grievance reviews; and consistency. (LBH)

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SPECIAL REPORT #27

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THE ART OF SETTLING GRIEVANCES: A STUDY IN CAMPUS CONFLICT RESOLUTION

by

Ronald P. Satryb*

Settling faculty grievances in a judicious manner fair to all legitimate interests is an art rarely mastered by mortals. Yet some administrators have developed approaches that appear to be quite successful and worthy of consideration by others. To study some of these approaches ACBIS commissioned Dr. Ronald Satryb, who made a definitive study of grievances in SUNY, to visit several campuses and to report any ideas that might be helpful to others. Although he visited only unionized campuses, his report should be of interest to anyone interested in improving the record of conflict resolution.

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Faculty grievances have historically been viewed as one of the most vexing and perplexing aspects of college and university administration. Unsatisfactory responses to grievances have, in fact, been a cause of faculty unionization. Yet, grievances appear to increase under collective bargaining, rather than to decrease. Can grievances be satisfactorily remedied under collective bargaining? By what means?

The primary purpose of this study was to determine how some imaginative higher education administrators and faculty representatives resolve disputes under a collective bargaining contract. The focus of this study was on the informal working relationships that helped to resolve conflict either within or outside the contractual procedures. Although grievance procedures were studied and discussed, they were considered to provide only the framework within which the parties attempted to resolve their differences. Differences between a procedural grievance (charging that the administration failed to adhere to contractual procedures) and a substantive grievance (charging the administration with making an unjustifiable decision) were also an important aspect of the study.

The following nine institutions were studied: State University Center at Buffalo; Oakland University; Central Michigan University; Youngstown State University; Southeastern Massachusetts University; Temple University; Rutgers State University; Glassboro State College; and Fairleigh Dickinson University. In all cases but one, both management and labor representatives were interviewed for this study. Institutions were selected on the basis of the uniqueness of their contracts; their special relationships as determined from the literature or personal conferences, and the length of time that they have been involved in collective bargaining. The interviews were structured to assure some consistency across institutions, but the interviewees were allowed to pursue a wide variety of topics in order to determine the unique relationships existing at each institution.

Interviews yielded a number of observations worth reporting to those interested in improving grievance resolution. Readers should be cautious about accepting these observations as infallible truths or applying them without careful thought and discussion with colleagues.

1. Who should administer the contract? Those interviewed generally agreed that considerable post-negotiations conflict can be avoided by assigning contract administration to the same individuals who negotiated the contract. In fact, on several campuses this device resulted in a reduction in emotional levels and in the number of formal grievances. Three of the institutions had a formal mechanism for this purpose called "Meet and Discuss Committees". Frequent meetings of these

committees usually diminished the use of the formal contractual grievance machinery. One reason perceived for this is that negotiating representatives from both faculty and administration can usually recall quite clearly what they meant when they negotiated the particular contractual clause underlying the grievance at hand. Through discussion, resolution of arguments over the meaning of various contract articles can be achieved and recorded in memos of understanding without resorting to formal grievance proceedings. In some cases the formal memo of understanding appeared to be a subtle method of expanding the contract through a continuing negotiations process, yet none of the parties showed concern.

2. Should faculty committees be part of the grievance structure?
Based on evidence gathered from the institutions studied, the existence of a faculty grievance committee prior to collective bargaining seems to assure that a faculty or faculty/administrative committee will be one of the steps in the bargained grievance procedure. In fact, on some campuses it appears that the formal inclusion of these types of committees into the contract added a dimension of legitimacy to collective bargaining for a majority of the faculty. This was particularly true at institutions with an historical tradition of collegial relationships. Nevertheless, there was also some evidence to suggest that the effectiveness of this device may decrease with time, especially if an intense adversarial relationship develops between the parties. Union militancy and increased conflict appear to lessen the effectiveness of and respect for these types of committees. One campus recently dropped traditional committees from its new contract, and another campus is considering similar action.

3. Should grievance procedures have an informal step?
Informal conflict resolution procedures seem to occur whether or not they are required by contract. On those campuses lacking a contractual informal grievance step there had developed various informal devices for resolving complaints before a written grievance was to be submitted for review. Where informal procedures were ineffective there was also a significant number of appeals to arbitration. In fact, experience at these nine institutions suggests that substantial use of arbitration is an accurate indication that the parties have reached a stage of ineffective communication on the underlying issues.

4. Who should be involved in the conflict resolution process?
The personalities and philosophies of the participants

plus their personal relationships appear to be more important to the resolution of conflict than the type of union in control, or the contract language. The state and national affiliation of the unions on the various campuses did not appear to have any major influence on the content of contracts or the local relationships that existed between management and labor. The best relationships existed where both parties to the contract had a positive attitude toward collective bargaining in higher education. On some campuses the labor relations specialists for the two parties had a friendly relationship, but found it difficult to resolve conflicts with any degree of consistency. In these situations the key administrators (President, Vice Presidents and Deans) showed an unwillingness to accept collective bargaining as a valid process. Their unwillingness was often demonstrated by an inflexible adherence to a narrow interpretation of contractual language (give the union as little as possible), and/or by refusing to meet with union representatives (labor relations or personnel specialists were often assigned this task).

5. Should the grievance process be secretive?
A mutually acceptable "Doctrine of No Surprise" was generally agreed to be important to the success of grievance processes. This "Doctrine" requires that formal and informal grievance reviews be open with information freely shared. The confidentiality of table negotiations should not be carried into contract administration. A less than candid posture on the part of management will destroy its credibility with the union. Credibility should, of course, be considered tenuous in an adversarial relationship. But a secretive hard-line approach by management is usually perceived by a union as encouragement to proceed to arbitration in order to get a fair hearing. Conversely, unions that refuse to accept any decision except one that is completely in their favor, and sometimes introduce new considerations at each subsequent step of a grievance procedure, usually produce intransigent management attitudes. It is difficult for either party to recover from mistakes made in a secretive atmosphere.

6. How strictly must the contract be followed to achieve a fair resolution of grievances?
Generally, management leans toward a strict interpretation of the contract articles, and the union will lean toward a more flexible interpretation of convenience. The union view may be stated as: Grievances should never be settled on technicalities (i.e., time limits and lack of compelling evidence). The management view may be

stated as: Bending the contract to accommodate recourse for poor procedures may establish dangerous precedents (e.g., ignoring time limits in one case may invalidate all negotiated time limits). Some campuses have been able to resolve this conflict of approaches through positive relationships among the grievance representatives and an intelligent application of a "fairness" doctrine. Grievances may be settled on technicalities to protect the integrity of the contract leaving underlying issues to be resolved outside of the procedures. Thus, a legalistic interpretation of the contract may not cause a deterioration of relationship as long as the administration is willing to make the grievant "whole" outside of the formal procedure. One executive appointed an ad hoc committee to make non-binding recommendations on each issue not readily resolvable within a formal grievance procedure because of a substantive fault. Other administrators acting within the formal grievance procedure have, on a procedural basis, denied a grievance relative to reappointment, but outside the procedure have reappointed the faculty member for one more year in order to overcome possible faults in substantive decisions. The achievement of "balance" requires well trained and experienced grievance review officials who have the full support and authority of the President. A specific example may furhter clarify the principles of balance and fairness. A faculty member is denied tenure after institutional procedures have been faithfully followed. After the grievance time limits have expired, the grievant uncovers evidence that the departmental evaluation was incomplete because certain scholarly publications were inadvertantly overlooked during the peer review process. This grievance can be technically denied on the basis that it is untimely and that proper procedures have been followed. However, invoking the principle of "fairness" the grievance review officer finds a fault in the application of the evaluation procedure. On "balance" an appropriate resolution could include two actions: a) that the grievance be denied to preserve the time clauses of the contract, b) that the reviewing officer recommend that the president reappoint the faculty member for one additional year in order to achieve a proper evaluation.

7. Should committees resolve substantive disputes? The problem of procedural vs. substantive interpretation of contract articles can become more complicated when faculty or faculty/administrative committees are part of the formal grievance procedure. It is almost certain that these committees will review substantive issues even when the contract limits grievances to procedural

errors. When this occurs they violate the contract and extend its original meaning. This, in turn, may force management to overrule committee decisions on a technical basis which in itself tends to create ill will and extend the emotional climate which the grievance procedure was designed to abate. To help alleviate this problem two campuses negotiated contractual clauses permitting the administration to appeal decisions by the original committee to a campus-wide committee partially appointed by the administration. Key administrators at these two institutions felt that this was one way to hold faculty responsible for their actions. This is an important innovation because few contracts permit middle managers (e.g., deans) to appeal committee grievance decisions to a "higher" committee. Ordinarily a union wants to keep pressure on the lowest level administrator to settle early. The opportunity to appeal to a higher level committee reduces that pressure.

8. Faculty reaction to the use of governance mechanisms in grievance resolution.
Militant faculty members within the union, or union challengers, tend to scoff at the inclusion of governance mechanisms (e.g., faculty senate) within the collective bargaining agreement. Most unions refer to this group as the "Young Turks", radicals, or just plain upstarts. They rerely represent a large portion of the faculty but are usually highly vocal. Since most governance bodies have a combined membership of faculty, administrators, and sometimes staff and students, the dissidents often claim that the control of each body rests with the administration, and therefore, the union is being co-opted by the administration. This same group also reacts negatively to the "meet and discuss committees" because such committees often negotiate conflict resolution agreements outside of the grievance procedures. In the estimation of some union radicals, effectiveness of a union may be judged by the number of grievances being filed. Administrators should be aware of this group and its particular political needs. One union official suggested that the best way to quiet this group was to elect its leaders to positions of responsibility within the union. At most institutions, these groups appear to be more of a problem for the union officers than they are for management.

9. Administrative reaction to the use of governance mechanisms in grievance resolution.
Certain administrators felt that the negotiation of governance procedures into the contract resulted in an

overly cumbersome document. Their two main objections seemed to be "democratic over-kill", and the weight of numerous and rigid time tables, especially in personnel areas. However, union officials generally felt that these same items were positive because they kept management on time and responsive to the union's needs. At campuses where all or part of the governance mechanisms had been negotiated into the contract, both management and union officials were generally satisfied with the results. This seemed to be particularly true on campuses that had a strong tradition of shared governance, and/or where the American Association of University Professors was the bargaining agent. This statement seems to hold only for the initial years of a contract and may decrease with time and changes in membership. Inclusion of the governance mechanism in the contract appears to bring with it the understanding and influence of the older and more prestigious faculty who view AAUP as a professional group rather than as a union. They appear willing to be active participants in a faculty senate even when they express little or no interest in union activity.

10. The union-faculty senate relationship.
Whether or not the governance organization becomes part of the contract, there was a strong belief that unionism had strengthened established self-governance mechanisms, especially within departments, through role and responsibility definition. Many of the old bodies considered to be no more than debating societies at one time have become more constructive contributers to the overall functioning of the institution. However, the strengthening of senate-type bodies has sometimes come about only after a long period of conflict with the unions. There may be a developing pattern where governance is not part of the contract. Initially, even though the rise of unionism may have been encouraged by the lack of effectiveness of a local senate, there will be a period of mutual accommodation. A period of conflict will then ensue over jurisdictional matters, and in some cases these conflicts may be encouraged by the administration. The next period is crucial because the union has the potential ability to negotiate or force the senate out of existence depending on campus circumstances. Although threats along this line were made, unions in the institutions studied preferred eventually to negotiate separate spheres of influence for each body that have generally resulted in mutual respect and a reduction of conflict.

11. Political considerations.
The way grievances are handled on individual campuses will

illustrate, at least in part, a responsiveness to political realities. Unions cannot always discourage grievances or settle "out of court". Unions are basically run as democracies and as a result must be responsive and sensitive to the needs of their membership. In some situations, the grievance committee or the executive board of the union will decide if and when grievances are to be filed, appealed, or carried to arbitration. The union grievance officer, therefore, will generally not have full authority to settle grievances with the administrative review officer. Conversely, some management review officials according to their place in the hierarchy have insufficient authority to make final decisions. This situation provides good reason for eliminating unproductive steps. Grievance reviewers must have the power to resolve each grievance and/or a strong record of non-reversal by superiors in order to be respected by union officials. An academic dean, as an example, who does not have the power to make final determinations should ordinarily be eliminated from the procedure in order to prevent unnecessary frustration and loss of his valuable time. This leads to a caveat: grievances should be formally initiated at the lowest level of administration holding the power to finalize a decision. Thus "class" grievances would be initiated at the level of the chief of that "class", normally the president.

12. Institutional communication.
Some of the union representatives interviewed considered communication between different levels of administrative review officials to be prejudicial. They suggested that independence and impartiality at each step was being replaced by collaboration and perhaps, collusion among reviewers at the various steps. There was no objection by either party to the union communicating openly with administrators at various grievance levels. On the campuses where the union had a basic trust and respect for the management reviewers this matter was not an issue. Regardless of union objectives, administrators felt open communication among reviewers was most helpful and almost essential for settling more grievances at the initial steps.

13. Multi-campus grievance reviews. At multi-campus institutions with a single contract, the above problem is exacerbated by off-campus reviews. A common complaint by union officials and sometimes local management officials, was the lack of understanding and experience of central office personnel with campus administration. In some instances they were accused of trying to be popular with faculty rather than making attempts to

conduct impartial reviews that could result in fair decisions. In addition, campus managers often had difficulty in local administration of the contract due to a lack of understanding of the original intent of distant negotiators with whom communication was minimal. Likewise state union officials, depending on their background, sometimes do not understand or appreciate the problems of the officials in the local chapters. Although poor communication is a constant problem within most organizations, it appeared to be more common and produce unusually difficult grievance situations in connection with administering a multi-campus contract. This does not appear to be as serious at a multi-campus institution whose units are geographically close. The opportunity for frequent meetings of both management and union officials appear to help resolve this particular problem and make it more like a single campus institution. The seriousness of these problems suggest the need for the inclusion of representatives from the local campus on the negotiating teams, and periodic workshops for interpretation and explanation of new contracts.

14. Consistency and openness.
Consistently fair administration policies and practices can decrease the need for formal conflict resolution procedures. Informal solutions of problems were more prevalent at those institutions that kept the doors of communication open. Administrators welcomed calls from union officials as an opportunity to hear complaints before they became problems. Each complaint, satisfactorily resolved, increased mutual respect and confidence.
Evidence of poor communication was found on two campuses where the union and management had completely divergent views on how effectively their relationship was functioning. Generally speaking, the administration tended to be overly paternalistic and the union overly resentful. However, neither party seemed to be sensitive to the other's feelings.

15. Campus uniqueness.
A final comment must be an emphasis on the value of negotiating a contract to suit the particular parties and conditions on each campus. This point was stressed in varying degrees by both union and management officials on almost every campus. This is not meant to discourage a review of other contracts, but simply as a caution to those who are tempted to borrow too freely from others' efforts. In addition, each contract should be sufficiently flexible to accommodate new directions, new programs and the new styles of leadership brought to campus by time and changes in personnel.